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November 16, 2018

VIA EMAIL Karen.Kloo@dep.state.nj.us
& FEDERAL EXPRESS

RECEIVED

NOV 19 2018

WANTAGE TOWNSHIP

Karen Kloo, Bureau Chief
Division of Solid & Hazardous Waste
Bureau of Recycling & Hazardous Waste Management
New Jersey Department of Environmental Protection
401 East State Street, Mail Code 401-02C
Trenton, New Jersey 08625

Re: Objection to Pending Application for Class B & C Facility Permit Renewal
RER Supply, LLC Facility – PI#132692, Permit No. CBG120001
Block 3, Lot 2.01, Clark Road, Wantage Township, Sussex County
Our File No. WANT001

Dear Ms. Kloo:

Our firm serves as the attorneys for the Township of Wantage (“Township”), which has received the October 16, 2018 letter and supporting materials filed by The Elm Group in support of the pending application of RER Supply, LLC (“RER”) seeking renewal of its lapsed Class B and C Recycling Permit.¹ Please accept this letter as providing the Township’s preliminary comments to the pending renewal application. We further anticipate providing more technical oriented comment upon more detailed review by the Township and its consultants in the future.

Initially, the Township notes that it has provided considerable support to RER as the Township has whole heartedly encouraged local, county and state recycling initiatives. Notably, the Township provided its formal endorsement when RER sought inclusion of its facility within the Sussex County Solid Waste Plan in 2013. Nevertheless, the Township’s prior support was premised on several stipulations and representations concerning on-site operations that RER has failed to live up to. Primarily, RER stipulated that its recycling operations, including the most noxious grass composting operations, would be limited to the approximately seven (7) acre portion of its property, thereby maintaining a 1,000-foot buffer from adjacent residential uses. Moreover, RER further stipulated that it would willingly appear for public hearing if ever seeking to expand its recycling operations or renewing its existing permit. The Township continues to believe a public hearing is warranted to provide an opportunity for public comment.

¹ RER appears to continue operating under its now-expired permit, having failed to timely apply for renewal within the time required by N.J.A.C. 7:26-3.6(a) and RER Permit Condition No. 3.

Because RER's permit has now lapsed, RER should now be required to seek a new permit consistent with the requirements of N.J.A.C. 7:26A-3.2. Alternatively, since RER's operations now well-exceed what it had stipulated when it previously petitioned for the Township's endorsement, at a minimum RER should be required to seek a modified permit consistent with the provisions of N.J.A.C. 7:26A-3.10. Either of these more appropriate permitting alternatives is preferable with respect to the Department's ability to receive and consider comments from the Township and its residents, who have experienced first-hand the problems long associated with RER's operations.

Background of Site Related Issues and Prior Approvals

Briefly, RER's facility is located off Clark Road, with proximate access to State Highway Route 23. Prior to receiving its most recent state permit, and well prior to amendment of the county plan, RER appeared before the Township Planning Board seeking preliminary and final site plan approval, which was granted in September, 1999. That local approval, which we fully appreciate and understand was superseded by the subsequently issued state permit, authorized RER to establish its composting facility within the Township. When approved locally, RER represented that it intended to manufacture/produce topsoil and mulch, which would be sold by RER at its primarily facility located in Riverdale. Importantly, RER agreed as part of that local approval process that any noxious odors generated by its composting operations would not be noticeable beyond a 500-foot buffer zone. Subsequently, RER returned before the Township Planning Board in 2003 to obtain minor subdivision approval. At this point in time, the Township was pleased with RER's operations, and further endorsed RER's application for its existing (now lapsed) permit in 2013.

However, during the most recent two years, RER's operations have remained a constant sore spot in the Township, as it has been subject to numerous complaints from neighboring residents regarding the noxious odors emanating from its site. Upon investigation, it was determined that RER's on-site operations had expanded well beyond the original 7.06 acres that had been endorsed by the Township, with the remaining property subject to a locally approved Woodland Management Plan. By 2017, the Township estimates that RER's operations expanded to include over 24 acres for recycling operations, a more than three-fold expansion, which encroached well inside the residentially-zoned portions of RER's property that the Township never imagined would be subjected to such uses.

When these issues were raised initially with the NJDEP, the Department's position was that recycling facilities are, by law, preempted from local regulations, thereby limiting the Township's ability to address the neighbors' complaints. While the Department conceded that the odor generation was problematic and contrary to RER's permit obligations, the Department's position was that RER's operations were no longer subject to prior site plan approvals, nor could the Township insist on RER returning before the Township Planning Board for amended site plan approval. While the Township has not yet taken exception to RER's permitted capacity, it does continue to take issue with RER's unauthorized expansion beyond its originally approved

operating area, causing the spread of composting operations into the portion of the property that remains zoned R-5, which happens to be the most restrictive residential zone in the Township.

Issues Pertaining to Existing Permit and Recycling Operations

Offsite Odors and Repeated Fire Events Confirm Operational Problems. Of the several concerns expressed herein, the most pressing involves the odor problems that have become a constant issue for the Township and its residents. The off-site impact has not only become a nuisance for neighboring residents, who cannot enjoy their yards when the odors are overwhelming, but it has also challenged the viability of nearby retail zoned lands, as local restaurants have expressed displeasure over these odors. RER's operational problems have also been corroborated by the sheer number of fire calls that have been reported in recent years. Appended hereto is a log maintained by the Township's Volunteer Fire Department of the triggered responses required due to mounds of material that either smoldered or caught fire. Despite raising this issue with the Department for the past several years, these problems persist and it appears the Department has all but ignored these concerns, having apparently not addressed it with RER in any substantial way.

RER's Unauthorized Expansion Must Be Curtailed. The Township firmly believes the persistent odor problems being experienced are due in no small part to RER's expansion beyond the 7.06-acre area originally contemplated for recycling/composting operations. That originally permitted portion of RER's property was and remains zoned for industrial uses, as it lies the furthest away from the closest residential uses. For that reason alone, the Township's prior endorsement of RER's operations was premised on RER maintaining its operations within that specific, industrially-zoned portion of its property. RER has since expanded into areas that were never contemplated for industrial uses. RER's stipulations and representations to the contrary, the Township never endorsed such an unauthorized expansion, nor did Sussex County when it amended its solid waste plan. Given these concerns, permitting RER to continue operations beyond the originally permitted portion of its property will remain a trouble spot, and will also inhibit the likelihood of economic development within the only remaining corridor of land within the Township that has any reasonable likelihood of such development.

A Public Hearing and Formal Comment Period Are Both Warranted. When the Township met with the Department last year to express its concerns, the Department assured the Township that its comment would be considered as part of any permit review process. While we appreciate the Department's consideration of this letter as being representative of the Township's position, that the Department may have inadvertently permitted RER to expand its operations over and upon residentially zoned and occupied areas of the Township, contrary to the Township's prior approval and endorsement, and to the detriment of the Township in general and surrounding property owners and uses, warrants a thorough hearing and consideration of these issues by way of a public hearing. Public hearings within the Township should be convened to allow the Department to hear directly from impacted residents and businesses prior to making any further permitting decisions as to RER's facility. As mentioned earlier, the Township did not endorse RER's ability to use the entirety of its property for recycling purposes, particularly when RER itself stipulated that such operations would be confined to the 7.06 acre industrially zoned portion of its property. That

the Township and its residents relied upon RER's stipulations and representations on its operations cannot be overlooked when considering whether the Department will be permitting the expansion of RER's operations notwithstanding these very problematic off-site impacts.

As RER has sought only a renewal of its permit, rather than a modified or new permit, the Department's regulations do not provide for any public notice other than serving a copy of the renewal application upon the Township Clerk. As noted, RER's renewal application is flawed not only by filing it out of time, but also given RER's unauthorized expansion. Under these circumstances, the Department should require RER to provide public notice and convene a public hearing that would be required as if this was a new or modified permit application; otherwise, the public will be deprived of any realistic opportunity to be heard. This is consistent with the position expressed by the enclosed letter dated June 13, 2017 that was jointly issued by the Honorable Steven V. Oroho and the Honorable F. Parker Space, State Senator and Assemblyman, respectively, asking the Department take corrective action with respect to RER's operations.

In summary, the Township does not believe RER's permit should be renewed, thus legitimizing what can only be described as an unauthorized expansion that has caused myriad off-site nuisances and other difficulties for the Township. By no means did the Township's prior endorsement of RER's recycling operations ever contemplate that RER would ignore its own stipulations and representations concerning maintaining recycling operations on the industrially zoned portions of its property. The result of RER's expansion is causing very real detriments to the Township, its residents and its businesses.

For these reasons, the Township believes the Department should deny RER's pending application seeking a renewal of its existing permit. Since RER failed to file for renewal within the time specified by the regulations and a condition of its own permit, RER alone is responsible for allowing its permit to lapse. Nor is RER even entitled to a renewal of this lapsed permit given the substantial modification to its operations. Instead, RER should either apply for a new permit, or, at the very least, apply for a modified permit, as either of these processes affords the public a more realistic opportunity to offer comment. The Department should carefully consider these and other comments from the public, which can help guide the Department's ability to address and correct the problems long associated with RER's operations.

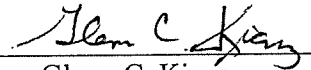
Karen Kloo, Bureau Chief
Re: RER Supply, LLC Facility

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If you have any questions with respect to the enclosed, please feel free to contact me.

Very truly yours,

WEINER LAW GROUP LLP

By: 
Glenn C. Kienz
A Member of the Firm

GCK:ST:pag

Enclosures

cc: Wantage Township Committee
Debra J. Millikin, Township Administrator
Harold E. Pellow, Township Engineer
Reenee Casapulla, Sussex County MUA
Alice Brees, Sussex County Planning Division
Andrew Flockhart, RER Supply, LLC
Vincent McDermott, NJDEP
Kenneth T. Hart, LSRP, The Elm Group
Senator Steve Oroho
Assemblyman Parker Space
Assemblyman Harold J. Wirths
Sussex County Solid Waste Advisory Committee

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Incident Report 14 results found — Download CSV

2017-113	06/18/2017 19:13:02 Station: 1 Disp. #: 1715665	142M - Mulch fire 310 State Hwy 23 Wantage NJ 07461
2017-10	01/13/2017 20:39:23 Station: 1 Disp. #: 1701305	142M - Mulch fire 310 Route 23 Wantage NJ 07461
2016-162	10/31/2016 13:25:11 Station: 1 Disp. #: 1628571	138 - Off-road vehicle or heavy equipment fire 310 State Hwy 23 Wantage NJ 07461
2016-86	06/10/2016 20:11:04 Station: 1 Disp. #: 1615220	160 - Special outside fire, other 310 State Hwy 23 Wantage NJ 07461
2015-46	03/09/2015 19:11:10 Station: 2 Disp. #: 1505508	160 - Special outside fire, other 310 State Hwy 23 Wantage NJ 07461
2014-148	09/28/2014 09:57:12 Station: 1 Disp. #: 1419613	160 - Special outside fire, other 310 State Hwy 23 Wantage NJ 07461
2014-143	09/22/2014 04:56:53 Station: 1 Disp. #: 1418569	622 - No incident found on arrival at dispatch address 310 Route 23 Wantage NJ 07461 Clark Road
2013-17750	11/26/2013 21:48:00 Station: 1 Disp. #: 000000	160 - Special outside fire, other 310 Route 23 Wantage NJ 07461
2013-15750	10/27/2013 16:02:00 Station: 2 Disp. #: 018	160 - Special outside fire, other 310 Route 23 Wantage NJ 07461
2013-13811	09/28/2013 23:36:00 Station: 1 Disp. #: 037	160 - Special outside fire, other 310 Route 23 Wantage NJ 07461
2013-13767	09/28/2013 19:11:00 Station: 2 Disp. #: 039	160 - Special outside fire, other 310 Route 23 Wantage NJ 07461
2013-9958	09/15/2013 11:54:00 Station: 2 Disp. #: 047	160 - Special outside fire, other 310 Route 23 Wantage NJ 07461 Rt 23 Behind Cook Creek
2013-08662	07/19/2013 03:32:00 Station: 1 Disp. #: 020	160 - Special outside fire, other 310 route 23 Wantage NJ 07461
2013-08104	07/11/2013 06:56:00 Station: 1 Disp. #: 072	160 - Special outside fire, other 310 route 23 Wantage NJ 07461

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